

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

FEB 11 2016

Clerk, U.S. District Court
District Of Montana
Missoula

TYRONE EVERETT PAYNE,

Plaintiff,

vs.

SAM WARREN, MISSOULA CITY
COUNCIL JUDICIAL AND LEGISLATIVE
BRANCH, and the STATE OF MONTANA
LEGISLATIVE BRANCH,

Defendants.

CV 16-00003-M-DLC-JCL

RECOMMENDATION AND ORDER

Plaintiff Tyrone Payne has filed a Motion to Proceed in Forma Pauperis. (Doc. 1.) On January 11, 2016, this Court issued an Order requiring Payne to show cause why his motion to proceed in forma pauperis should not be denied pursuant to Local Rule 3.1(d)(4) because this would be Payne's third non-habeas action pending in this Court.¹ (Doc. 4.) Payne was given an opportunity:

- (A) to show that he is in imminent danger of serious physical injury;
- (B) to pay the full filing fee for one or more of the pending or proposed actions;
- (C) to dismiss voluntarily, pursuant to Fed. R. Civ. P. 41(a)(1), one or more pending actions in which the prisoner is proceeding in forma pauperis; or

¹Local Rule 3.1(4)(d) provides that a prisoner may not maintain more than two concurrent non-habeas actions in forma pauperis.

(D) to withdraw one or more of the actions for which leave to proceed in forma pauperis is sought.

On February 9, 2016, Payne filed a Motion for Extension of Time to respond to the Court's February 12, 2016 deadline. (Doc. 6.) Payne seeks an extension as he believes he will be released from custody on February 22, 2016 and then could dismiss and refile one of his actions because he will no longer be a prisoner.

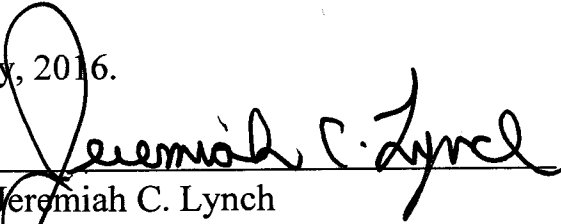
Payne may not maintain more than two concurrent non-habeas actions in forma pauperis. L.R. 3.1(4)(d). He was given notice and opportunity to remedy this issue and failed to do so. The Court sees no reason to provide Payne an extension of time to allow him to refile an action once he has been released from custody. There is no statute of limitations issues on the claims at issue in this matter. Therefore, the Court should dismiss this matter without prejudice and Payne may refile it if he is released from custody and/or one of his other actions are resolved.

Because Payne is not entitled to a ten-day period to object, this Order will be entered directly upon endorsement. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). No motion for reconsideration will be entertained.

Accordingly, Payne's Motion for Extension of Time (Doc. 6) is **DENIED**

and the Court **RECOMMENDS** the following Order be issued by Judge Christensen,

DATED this 11th day of February, 2016.

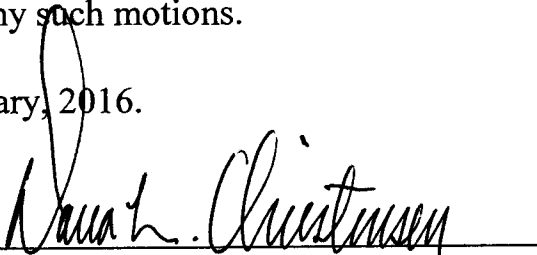

Jeremiah C. Lynch
United States Magistrate Judge

Based upon the above Recommendation by Judge Lynch, the Court issues the following:

ORDER

1. Payne's Motion to Proceed in Forma Pauperis (Doc. 1) is **DENIED** pursuant to 28 U.S.C. § 1915(g).
2. The Clerk of Court is directed to close the case and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.
3. No motions for reconsideration or rehearing will be entertained and the Clerk of Court is directed to discard any such motions.

DATED this 11th day of February, 2016.


Dana L. Christensen, Chief Judge
United States District Court